

EXAMINER'S AMENDMENT

Appellants amendments filed 3/26/09 have NOT been entered since prosecution is closed. Any amendment is not a matter of right since the Board did not set forth a new grounds for rejection or offer an opinion as to how the claims should be amended as set forth in 37 CFR 41.50(b) and (c). The Board states that;

"Appellants do not dispute the Examiner's rejection and state that they intend "to amend claim 33 to provide proper antecedent basis for the claim element when prosecution is re-opened" and "to amend claim 46 to properly reflect its dependency" (Reply Br. 4)."

While the prosecution remains closed and has not been reopened, the intentions of appellant's amendment has been treated by an examiners amendment below to effectively enter it in part. As such the examiner's amendment reflects the changes in the amendment made to claim 46. Claim 33 is still considered indefinite where associated prizes have never been provided by any step of the previous claim. Here one cannot determine if prizes are a necessary part of the claimed combination or merely recites a functional condition by which the game continues to "proceed". As such claim 33 has been cancel by the examiners amendment as being affirmed by the Board decision.

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

The application has been amended as follows:

Claim 33 and 62-97 has been cancelled.

In claim 46, on ln. 1, "30" has been deleted and --31-- inserted therefore. The word –the-- has been inserted after "wherein" and before "method".

Drawings

Formal drawings are now required.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to William Pierce whose telephone number is 571-272-4414 and E-mail address is bill.pierce@USPTO.gov. The examiner can normally be reached on Monday and Friday 9:00 to 5:00.

If attempts to reach the examiner by telephone are unsuccessful, communication via email at the above address may be found more effective. Where current PTO internet usage policy does not permit an examiner to initiate communication via email, such are at the discretion of the applicant. However, without a written authorization by applicant in place, the USPTO will not respond via Internet e-mail to any Internet correspondence which contains information subject to the confidentiality requirement as set forth in 35 U.S.C. 122. A paper copy of such correspondence will be placed in the appropriate patent application. The following is a sample authorization form which may be used by applicant:

"Recognizing that Internet communications are not secure, I hereby authorize the USPTO to communicate with me by responding to this inquiry by electronic mail. I understand that a copy of these communications will be made of record in the application file."

For further assistance examiner's supervisor, Gene Kim can be reached on 571-272-4463. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/William M Pierce/

Primary Examiner, Art Unit 3711